CHIEF ASSESSOR, PROPERTY TAX, SINGAPORE v. HOWE YOON CHONG

[C.A. (Wee Chong Jin C.J., Thean & Chua JJ.), October 9, 1984]

[Singapore – Civil Appeal No. 1 of 1982 (In the matter of Originating Motion No. 30 of 1975)]

Property tax – Valuation List – Increase in annual value of property – Valuation – Factors for consideration – Property Tax Act (Cap. 140), ss. 17, 18(2), (4) & (7) – Constitution of Singapore, art. 12.

This case started when the appellant, the Chief Assessor, served a notice dated October 1, 1973 under s. 18(2) of the Property Tax Act on the respondent, Howe Yoon Chong ("the owner"), proposing to amend the 1973 Valuation List by increasing the annual value of the property Lot 61-134 of T.S. XXVII situate at Peck Hay Road, Singapore ("the property"), from $1,340 to $26,000 effective April 4, 1973. The owner objected to the increase but the Chief Assessor disallowed the objection, whereupon the owner appealed to the Valuation Review Board. The Board confirmed the annual value proposed by the Chief Assessor and rejected the contentions of the owner, viz. (i) the 1973 Valuation List was invalid, (ii) the proposed increase would be contrary to Article 12 of the Constitution, and (iii) the proposed annual value was manifestly excessive.

The owner appealed against the Board's decision to the High Court, which allowed his appeal on the ground that the notice for the proposed increase under s. 18(2) of the Act was invalid.

The Chief Assessor then appealed to the Court of Appeal, which allowed the appeal and restored the decision of the Board, holding *inter alia* that the notice of proposed increase and the 1973 Valuation List were valid, and that there was no violation of Article 12 of the Constitution (see [1979] 1 M.L.J. 207).

Against that decision the owner appealed to the Privy Council. The owner's arguments that the 1973 Valuation List was invalid and that his rights under Article 12 of the Constitution had been infringed failed before the Privy Council. But, as the Court of Appeal did not consider the evidence on value and neither party addressed the Court of Appeal on the question of value, the Privy Council allowed the appeal and directed the High Court to determine the question of value of the property (see [1981] 1 M.L.J. 51).

Pursuant to that direction, Rajah J. heard evidence and submissions in the High Court. The question there was essentially one of valuation of the property as at April 4, 1973. The property had an area of 1,381.9 sq. m. (14,875 sq. ft.), with a 20 ft. by 120 ft. finger-like projection and some steep slopes. Both parties agreed that the sale of the front lot (Lot 61 – 126) on April 4, 1973 at $41 p. sq. ft. was the best guide and that the property could not but be valued at lower than $41 p. sq. ft. The annual value of $26,000 was computed in accordance with paragraph (b) of the proviso to the definition of annual value under s. 2 of the Act and represented 5% of $520,625, the value of the property as at April 4, 1973 calculated at the rate of $35 p. sq. ft. The Chief Assessor adopted the price of $41 p. sq. ft. for the property but allowed a discount of 5% for the finger-like projection and a further discount of 10% in view of the steep slopes. The learned judge in his judgment dated January 7, 1982 considered three factors: (a) the rear lot, (b) no planning permission, and (c) the steep slopes and contours of the property. He made adjustments of $98,400 for factor (a), $30,494 for factor (b) and $91,481 for factor (c), totalling $220,375 to be deducted from the sum of $609,875, the value of the property calculated at $41 p. sq. ft. He accordingly fixed the annual value of the property at $19,475 being 5% of $389,500.

The Chief Assessor appealed against the decision of Rajah J. and thus the case came before the Court of Appeal the second time.

Held: confirming the valuation of the deputy chief valuer: (1) the learned judge erred in making the adjustments to the valuation of the property. On factor (a) it is plainly wrong to extract the property from its present location and place it side by side with the front lot. It is a fundamental principle in valuation that a property must be valued as it in fact stands, i.e. *rebus sic stantibus*. The finger-like projection serves a real purpose in determining the density of the property for development purposes. It also serves as an obvious access to Peck Hay Road;

(2) on factor (b) it is common ground that at the relevant time, the front lot and the property had no planning permission; therefore the discount of 5% of the price of $41 p. sq. ft. is not warranted;

(3) on factor (c) there is no basis for increasing the discount of 10% of the value of the property as allowed by the Chief Assessor;

(4) having regard to all the evidence adduced, there is no justification for disturbing the valuation of the property made by the Deputy Chief Valuer.

Case referred to:

(1) *Robinson Borthers (Brewers) Ltd.* v. *Houghton and Chester-le-Street Assessment Committee* [1937] 2 K.B. 445, 468.

HIGH COURT.

P. Selvadurai for the appellant.
Mrs. Lucy Hangchi for the respondent.

Rajah J.: By virtue of a direction contained in Privy Council Judgment dated July 24, 1980 (Privy Council Appeal No. 11 of 1979) this matter has been remitted to me to determine the question of value of Lot 61-134 TS XXVII (the subject lot) in the light of such evidence limited to value as the parties may put before me. Such evidence has been led and submissions thereon made by counsel for both parties. It is now for me to determine the value of the subject lot.

I agree with the Deputy Chief Valuer when he says in his Valuation Report (Ex. D1-27) on Lot 61-134 TS XXVII at paragraph 6 thereof that "the sale of TS 27 Lot 61-126 at $41.00 per sq. ft. on April 4, 1973 would be the best guide to the value of the subject land Lot 61-134 which is just behind it. A number of factors have to be considered in the comparison, i.e.

(a) Subject Lot 61-134 is to the rear of Lot 61-126 and Lot 61-126 has 154 feet frontage to Peck Hay Road. What should be the adjustments in value?

(b) Did Lot 61-126 at the time of sale, on April 5, 1973 have any planning permission?

(c) How does the steep slope of Lot 61-134 fronting the Cairnhill Circle Road Reserve affect its value?"

At $41/- per sq. ft. the value of the subject land (14875 sq. ft.) is $609,875/-.

Factor (a) – Rear Lot

Both parties agree that as the subject lot is a rear lot it cannot but be valued at a figure lower than $41/- per sq. ft. But they do not agree on the *exact differential* as between the two lots. The Deputy Chief Valuer says the reasonable figure in this case is 5%, whereas the taxpayer's valuer says that the proper differential should be anywhere from a minimum of 10% to a maximum of 25%, the exact figure to be ascertained on the circumstances and facts of each case. This being so it is now for the Court to determine the differential between the two lots, that is to say, it is for the Court now to evaluate in monetary terms the difference in value due to the factor of the subject lot being at the rear of the front lot the whole frontage of which adjoins a public road. To effect this what I propose to do is to try and put the subject lot in exactly the same favourable position as the front lot and to do this the subject lot is to be placed beside the front lot in a manner that the whole of the front of the subject lot will have the same kind of access to itself that the front lot enjoys. And this can only be done by eliminating, if I may borrow the apt words of the Deputy Chief Valuer, the "finger-like projection of 20 feet wide serving as an access way". It is not in dispute that the said finger-like projection is 2400 sq. ft. in area. In equating the subject lot with the front lot the said finger-like projection loses its purpose and value and for purposes of this assessment exercise becomes, to my mind, sterile and irrelevant. At $41/- per sq. ft. this finger-like projection of 2400 sq. ft. multiplies to $98,400/-.

Factor (b) – Planning Permission

It is not in dispute that these two lots on April 4, 1973 did not have any planning permission for the erection of a block of flats. However, it is clear to me from the nature of the evidence of the managing director of San Ming Enterprises Pte. Ltd. and his demeanour that when the company bought the front lot on April 4, 1973 the company intended to carry out the maximum permitted development on the lot — 150 persons to the acre — and what is more the managing director had satisfied himself that his company would have no difficulty in obtaining such planning permission as and when he wanted. I am satisfied that had it not been for this he would not have bought the front lot at $41/- per sq. ft. or at all. So for purposes of evaluating the subject lot I propose to treat the price of $41/- per sq. ft. for the front lot as if it had had planning permission at the time of purchase for the erection thereon of a block of flats of ten units. Now, how then do I evaluate this. In answer to a question by the Court the Deputy Chief Valuer said that had the front lot had planning permission at the time of purchase to erect a block of flats of ten units he would in his Valuation of the subject lot have provided an adjustment of 5% on its price at $41/- per sq. ft. as indeed he had done for his two other factors. In the circumstances this figure is in my view reasonable and I accept the percentage thus given and so the amount to be adjusted on $609,875/- comes to $30,494/-.

Factor (c) – Steep Slopes and Contours of Subject Lot

In his Valuation Report, the Deputy Chief Valuer agrees at paragraph 7 thereof that there should be an "adjustment for steep slopes and other physical features" (on which a fair amount of evidence was adduced) of 10% based on $609,875. During the course of his evidence the Deputy Chief Valuer said that under this factor he had taken into consideration all necessary development costs (earthworks, drainage, etc.) that would have to be incurred prior to building on the subject lot. I have carefully taken into account all the evidence given on this score and have come to

the conclusion that, in all the circumstances of this case, 15% rather than 10% would be a more appropriate percentage for factor (c). At 15% the amount to be adjusted on $609,875/- works out at $91,481/-. For the record I have to state that I have inspected both the lots, more particularly the subject lot in the company of the parties and their respective counsel.

I hold that the estimated value of the subject lot for the year 1973 with effect from April 4, 1973 is $389,500/-, being $609,875/- less the three abovementioned figures of $98,400/-, $30,494/- and $91,481/- (total $220,375/-). From this I need hardly say that I have not entirely accepted paragraph 5.1 of Ex. P3, the Valuation Report put in on behalf of the Appellant but have accepted the Deputy Chief Valuer's three heads for adjustment as all embracing but not his percentages.

I therefore fix the annual value of Lot 61-134 TS XXVII at $19,475/-, being 5% of $389,500/-, for the year 1973 with effect from April 4, 1973.

COURT OF APPEAL.

Mrs. Lucy Hangchi for the appellant.
P. Selvadurai for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): This case has a long and chequered history. It started in October 1973, when the Chief Assessor, the Appellant in this appeal, served a notice dated October 1, 1973 on Howe Yoon Chong, the Respondent, under section 18(2) of the Property Tax Act (Cap. 144) ("the Act") proposing to amend the 1973 Valuation List by increasing the annual value of the property, Lot 61-134 or T.S.XXVII situate at Peck Hay Road, Singapore (the "subject property") from $1,340 to $26,000 with effect from April 4,1973. That proposed increase in the annual value arose from a notice of transfer dated June 29, 1973 given by the Respondent to the Appellant pursuant to section 17 of the Act informing the latter that an undivided one half share of the subject property had been transferred to the respondent on April 4, 1973 pursuant to a Declaration of Trust. The Respondent objected to the proposed increase, but the objection was disallowed by the Appellant. Thereupon the Respondent appealed to the Valuation Review Board ("the Board") under section 18(4) of the Act. Before the Board it was contended that (i) the 1973 Valuation List was invalid, (ii) since comparable properties, which had a much lower annual value than that proposed for the subject property, had not been revalued upwards, it would be unfair and unjust to increase the annual value of the subject property and to do so would be contrary to Article 12 of our Constitution and (iii) the proposed annual value was manifestly excessive. All these arguments were rejected by the Board which confirmed the annual value proposed by the Appellant.

Against the decision of the Board the Respondent appealed to the High Court. Before the High Court the Respondent contended that (i) the notice for the proposed increase under section 18(2) of the Act was invalid for the reason that the Appellant had no grounds under section 18(7) thereof which enabled him to issue the said notice and (ii) the 1973 Valuation List, in respect of which the Appellant took action under section 18 of the Act, was in itself invalid for reasons that the preparation of the said Valuation List was contrary to the provisions of Article 12 of our Constitution. The High Court accepted the first contention advanced and allowed the appeal.

The Appellant then appealed to the Court of Appeal, which held that (i) the notice of proposed increase in annual value of the subject property under section 18(2) of the Act was valid, (ii) the 1973 Valuation List was valid, (iii) there was no contravention of Article 12 of the Constitution, (iv) under the Act a property must be assessed independently and correctly and once this was done it was immaterial that as a consequence other comparable properties were assessed incorrectly and (v) there was nothing to show that the Board erred in accepting the Appellant's proposed assessment of annual value of the subject property. Accordingly, the Court of Appeal allowed the appeal and restored the decision of the Board.

Against that decision the Respondent appealed to the Privy Council, where it was argued on behalf of the Respondent that the 1973 Valuation List was defective and invalid, or alternatively that the subject property having been amended to its up-to-date value had not been fairly valued in comparison with similar properties which appeared on the Valuation List at values that were too low

and hence the Respondent's rights under Article 12 of our Constitution had been infringed. These arguments failed but the Privy Council held that the Court of Appeal did not consider the evidence on value which was before the High Court and that neither party addressed the Court of Appeal on the question of value which would be best determined by the High Court. Accordingly, the appeal was allowed and the case was sent back to the Court of Appeal for that Court to remit it to the High Court to determine the question of value in the light of such evidence limited to value as the parties may put before it.

Pursuant to the judgment of the Privy Council, the case came before the High Court for determination of the question of value of the subject property. At the hearing further evidence was adduced by both parties pertaining to the question and the High Court determined the annual value of the subject property at $19,475 for the year 1973 with effect from April 4, 1973. Against that decision the Appellant appealed and this case came before this Court the second time. At the conclusion of the appeal we allowed the appeal with costs, here and below, to the Appellants, set aside the order made by the High Court and confirmed the annual value of the subject property at $26,000 with effect from April 4, 1973.

The question before the High Court is essentially one of valuation of the subject property as at April 4, 1973. The subject property has an area of 1,381.9 sq. m. (14,875 sq. ft.) and is roughly squarish in shape with a 20 ft. wide and 120 ft. long finger-like projection leading to Peck Hay Road which obviously serves as an access to the property. Immediately adjoining the subject property on the north-eastern side thereof is Lot 61-126 which is fronting Peck Hay Road ("the front lot"), and the north-eastern side of the subject property is about 10 ft. higher than the front lot and the finger-like projection slopes gently towards Peck Hay Road. From its north-east boundary the land rises gently to the south-west. However, at or near the south-west boundary thereof there is a steep slope to a height of about 15 ft. above which is fronting a road reserve at Cairnhill Road. An earth drain of about 1 ft. deep runs across the southern corner of the land.

According to the Master Plan the subject property is zone 'residential' with a maximum density of 150 persons per acre. In the Micro-zoning Plan this property falls in an area where high rise development is permitted. As of April 1973 there were already erected high rise developments in the vicinity of the subject property.

The annual value of $26,000 as assessed by the Appellant is computed in accordance with paragraph (b) of the proviso to the definition of annual value under section 2 of the Act and represents 5% of the value of the subject property as at April 4, 1973 which is $520,625 calculated at the rate of $35 per sq. ft. In arriving at this value the Appellant considered the sale of the front lot, namely: Lot 61-126, as the best guide. There is no dispute on this point: the Respondent's valuer, Tan Ah Bah, also expressed the view that the sale of the front lot is "the best guide in determining the value" of the subject property: see page 175 of the Record of Appeal. Coincidentally, that property was sold on April 4, 1973; the price paid by the purchaser was $41 per sq. ft. The Appellant therefore adopted this price of $41 per sq. ft. for the subject property, but he made two adjustments, namely:

(a) As the subject property is situate at the rear of the front lot with only a finger-like projection to Peck Hay Road, he gave a discount of 5% of the said value.

(b) In view of the steep slopes on the subject property and other physical features and the presence of the earth drain, he gave a further discount of 10% of the said value.

After deducting these two amounts he arrived at a value of approximately $35 per sq. ft and the total value of the subject property came to $520,625.

The learned judge having accepted that the sale of the front lot as the best guide to the valuation of the subject property proceeded to consider three factors as follows:

"(a) Subject Lot 61-134 is to the rear of Lot 61-126 and Lot 61-126 has 154 feet frontage to Peck Hay Road. What should be the adjustments in value?

(b) Did Lot 61-126 at the time of sale, on April 5, 1973 have any planning permission?

(c) How does the steep slope of Lot 61-134

fronting the Cairnhill Circle Road Reserve affect its value?"

On factor (a) he gave a discount of $98,400 and his ground for so doing is this:

"Factor (a) – Rear Lot

Both parties agree that as the subject lot is a rear lot it cannot but be valued at a figure lower than $41/- per sq. ft. But they do not agree on the exact differential as between the two lots. The Deputy Chief Valuer says the reasonable figure in this case is 5% whereas the taxpayer's valuer says that the proper differential should be anywhere from a minimum of 10% to a maximum of 25%, the exact figure to be ascertained on the circumstances and facts of each case. This being so it is now for the Court to determine the differential between the two lots, that is to say, it is for the Court now to evaluate in monetary terms the difference in value due to the factor of the subject lot being at the rear of the front lot, the whole frontage of which adjoins a public road. To effect this what I propose to do is to try and put the subject lot in exactly the same favourable position as the front lot and to do this the subject lot is to be placed beside the front lot in a manner that the whole of the front of the subject lot will have the same kind of access to itself that the front lot enjoys. And this can only be done by eliminating, if I may borrow the apt words of the Deputy Chief Valuer, the "finger-like projection of 20 feet wide serving as an access way." It is not in dispute that the said finger-like projection is 2400 sq. ft. in area. In equating the subject lot with the front lot the said finger-like projection loses its purpose and value and for purposes of this assessment exercise becomes, to my mind, sterile and irrelevant. At $41/- per sq. ft. this finger-like projection of 2400 sq. ft. multiplies to $98,400/-."

For factor (b) the learned judge treated the front lot as having had planning permission at the time of the sale and since the subject property had no planning permission at the material time he allowed a discount of $30,494/-. He said:

"It is not in dispute that these two lots on April 4, 1973 did not have any planning permission for the erection of a block of flats. However, it is clear to me from the nature of the evidence of the managing director of San Ming Enterprises Pte. Ltd. and his demeanour that when the company bought the front lot on April 4, 1973 the company intended to carry out the maximum permitted development on the lot – 150 persons to the acre – and what is more the managing director had satisfied himself that his company would have no difficulty in obtaining such planning permission as and when he wanted. I am satisfied that had it not been for this he would not have bought the front lot at $41/- per sq. ft. or at all. So for purposes of evaluating the subject lot I propose to treat the price of $41/- per sq. ft. for the front lot as if it had had planning permission at the time of purchase for the erection thereon of a block of flats of ten units."

Since the subject property had no planning permission at this time, he allowed a discount of 5% of the sale price of $41 per sq. ft., which amounts to $30,494.

As regards factor (c) the learned judge allowed a discount of 15%. He said:

"In his Valuation Report, the Deputy Chief Valuer agrees at paragraph 7 thereof that there should be an "adjustment for steep slopes and other physical features" (on which a fair amount of evidence was adduced) of 10% based on $609,875. During the course of his evidence the Deputy Chief Valuer said that under this factor he had taken into consideration all necessary development costs (earthworks, drainage, etc.) that would have to be incurred prior to building on the subject lot. I have carefully taken into account all the evidence given on this score and have come to the conclusion that, in all the circumstances of this case, 15% rather than 10% would be a more appropriate percentage for factor (c)."

With respect, the learned judge erred in making the adjustments to the valuation of the subject property. On factor (a) it is plainly wrong to extract the subject property from its present location and place it side by side with the front lot so that both lots will have the same kind of access and frontage and then excise the finger-like projection containing an area of about 2400 sq. ft., which thereby is considered to have lost "its purpose and value" and became "sterile and irrelevant." First, it is a fundamental principle in valuation that a property must be valued as it in fact stands, *i.e., rebus sic stantibus:* see judgment of Scott, L.J. in *Robinson Brothers (Brewers) Ltd.* v. *Houghton and Chester-le-Street Assessment Committee* (1) . In placing the subject property beside the front lot, treating it as if it had full frontage and eliminating that strip of finger-like projection, the learned judge has in effect changed the location and other aspects of the subject property. Secondly, the finger-like projection serves a real purpose: it is an area which is taken into account in determining the density of the subject property for development purpose. Lastly, it serves as an obvious access for the subject property to Peck Hay Road.

On factor (b) we do not see how the learned judge could, for the purpose of evaluating the subject property, treat the front lot as if it had planning permission at the date of the sale when it is common ground that at that time no planning permission had been obtained. His conclusion appeared to have been based on the evidence of Chih Fang Mou, D.W.2, the managing director of

the purchaser of the front lot. But according to D.W.2, he had not obtained any planning permission at that time. He said:

"Paid $41/- per sq. ft. for the land. In Feb. 1973 I came to know that this land was for sale through my solicitors. The owner asked for $50/- per sq. ft. I immediately offered $40/- per sq. ft. The vendor said he would consider. I then took the key plan to my architects Messrs. Ang Keng Leng. He told me that I could build up to maximum density of 150 persons per acre. He told me I could build high rise flats. In March 1973 we agreed to sell and buy at $41/- per sq. ft. Consulted no one else from the Planning Dept. Conveyance of land on 4.4.73. No contract was agreed. Same solicitor acted for both parties. I wrote to the owners of the subject lot offering to buy that lot immediately after my purchase. There was no reply at all. I had a special interest in the other land. I was prepared to offer the lot at $45/- per sq. ft. I had a special interest. We started development in 1961. On the subject lot high rise development is possible. Site preparation not much more than my lot."

The most that one can make of the evidence of D.W.2 is that he was extremely sanguine over the proposed development of the front lot. But he was equally sanguine in this respect with reference to the subject property. But such optimism on the part of D.W.2 should not be mistaken as tantamount to his having planning permission for a proposed development he had in mind at the time. Obviously a purchaser, such as D.W.2, who was prepared to buy a property at $41 per sq. ft., must have assessed the potential of the property, the permitted development and the likelihood of getting planning permission for a proposed development. Accordingly, in our opinion, the discount of 5% of the price at $41 per sq. ft. given by the learned judge for factor (b) is not warranted.

As regards factor (c) we find ourselves again in disagreement with the learned judge and in our opinion there is no basis for increasing the discount of 10% of the value of the subject property as allowed by the Appellant. We agree that the subject property suffers from certain disadvantages when compared to the front lot. However, these disadvantages have been taken into account by the Appellant and a discount of 10% of the said value has already been allowed, which seems to us to be fair and reasonable. We shall revert to this point at greater length when we deal with the valuation report of the deputy chief valuer, D.W.5.

We now turn to consider the evidence relating to valuation of the subject property. In support of the case for the Respondent, two valuers were called and gave evidence. The first is Ronald Chua who gave evidence orally before the Board and by way of an affidavit before the High Court when the appeal from the Board first came before the Court. In his view the subject property is subject to various restrictions which would affect its development potential, namely:

(a) The narrow access strip of land leading to Peck Hay Road, which would be insufficient as an access for high rise development with multiple units.

(b) There is only a small area available for building purpose owing to the steep slopes along the north-eastern and south-western portions of the subject property.

(c) The steep slopes and the presence of the earth drain would increase costs of development.

(d) The presence of a 10-storey high block of flats on the front lot and the high level of road reserves on Cairnhill Road would reduce substantially the privacy of any proposed residential building on the subject property.

He also expressed the view (before the Board) that the high rise development might not be permitted on the subject property which was more suitable for one or two storey bungalow. In the result he arrived at a value of $15 per sq. ft. and an annual value of $11,157 for the subject property. His evidence was clearly very much exaggerated and totally unrealistic.

The next valuer the Respondent called is Tan Ah Bah who prepared a valuation report dated July 25, 1981: see pages 175-177 of the Record of Appeal. In his report he accepted the sale of the front lot as the best guide in determining the valuation of the subject property. Having said that, he then considered that the subject property was inferior in may respects when compared to the front lot and generously allowed the following discounts:

(a) 10% for the irregular shape;

(b) 8% for the narrow strip finger-like projection leading to Peck Hay Road;

(c) 15% for the fact that the subject property is situate at the rear of the front lot, and

(d) 5% for the narrow access from Peck Hay Road, which is very restricted as compared to the front lot.

Not content with these deductions he then made 2 further allowances. First, because of the steep slopes of the subject property and the earth drain thereon, additional costs would be incurred in building retaining walls and diverting the drain and for such costs he allowed a sum of $127,577.78 on the basis of the estimate therefor submitted by P.W.2, a quantity surveyor. Secondly, as a consequence of these additional works more time, which he estimated to be 3 months, would be taken to complete the site and he allowed a holding cost of about $3,189.43, being the amount of interest computed at the rate of 10% on the said sum of $127,577.78 for 3 months. By this route he arrived at a value of $16,63 per sq. ft. for the subject property and then rounded it off to $15 per sq. ft. as the fair value thereof and thereby concluded that the annual value in 1973 should be $11,157. With regret we find Tan Ah Bah's valuation wholly unacceptable. It is manifestly defective in so many respects and we are inclined to agree with the suggestion made by Mrs. Hangchi on behalf of the Appellant that his valuation was an exercise in making sufficient deductions so as to arrive at the desired annual value of $11,157.

The Respondent also enlisted the assistance of Seah Kim Bee, who gave evidence by way of an affidavit and orally before the High Court when the appeal from the Board first came on for hearing. Seah is a planner and was formerly in the employ of the Planning Department. In his view, there are two substantive limitations to any development on the subject property: one is the narrow access of 20 ft. wide from Peck Hay Road, as he maintained that there was a development control restriction from the Planning Department which allowed only 4 dwelling units on properties with such limited access to a public road, and the other is the presence of the 10-storey block on the front lot as a result of which any development on the subject property for reason of privacy would have to orientate the living rooms and bedrooms to face east and west. "East and west facing flats are not a particularly attractive proposition, for obvious reasons," he said. In addition, he emphasized that a low rise development or the lower floors of a high rise development would be unattractive because of the high building on one side, i.e. high rise development of the front lot, and high bank on the other, i.e. steep slope on the south-west boundary of the subject properly fronting Cairnhill Road. His evidence on the first limitation was refuted by Jeffrey Heng of the Planning Department: see pages 57-60 and 68-69 of the Record of Appeal. There is also the evidence of Cheong Wing Ying of the Planning Department called by the Appellant. She is a planner and in charge of the development in the Cairnhill area and she testified that a similar development to that on the front lot could be permitted on the subject property. Seah's evidence on the second limitation was far too sweeping and we have grave doubts as to its correctness. It seems to us that such a limitation can be overcome partially, if not wholly, by judicious design and planning, and there must be numerous high rise apartments in Singapore with living rooms and bedrooms facing east and west, and there is no evidence that such apartments are "not a particularly attractive proposition." We therefore do not accept Seah's evidence on the limitations of the subject property.

There are two other witnesses, Y.C. Wong, an engineer, and K.A. Suckling, a quantity surveyor, called by the Respondent; but we do not find their evidence of any assistance.

In support of his case the Appellant relied principally on the evidence of Lim Soo Chin, the deputy chief valuer of the Property Tax Division, who gave evidence and put up a valuation report. The starting point in his valuation of the subject property is the price paid for the sale of the front lot at $41 per sq. ft. which he considered as the best guide: see page 184 of the Record of Appeal. In comparing the two lots he conceded that the subject property suffered from 2 disadvantages. First, the subject property is situate at the rear of the front lot and enjoys only a narrow access through the finger-like projection to Peck Hay Road. For this factor he allowed a discount of 5% of the value at $41 per sq. ft. Secondly, there are steep slopes at the north-east and south-west portions of the subject property and there is also present thereon an earth drain which, of course, would have to be diverted in developing the property. However, in conceding this disadvantage he also took into account the following factors which, in our view, are very relevant:

(a) The front lot also had a steep slope and the purchaser had to level the site and erect a retaining wall of about 10 ft. high to protect

the slope at the common boundary between the front lot and the subject property.

(b) Most of the sites at Cairnhill Road and Peck Hay Road are hilly and most of the high rise development would require some form of retaining walls.

(c) It is possible to have a high rise development designed in such a way as not to interfere too much with the existing natural slope.

(d) Lastly, at the material time i.e. April 4, 1973, it was a sellers' market and in any negotiation it would be difficult for a purchaser to succeed in obtaining any substantial reduction to take account of the disadvantageous physical features.

Hence in his view a reasonable deduction from the price of $41 per sq. ft. to take account of the steep slope at the rear and other minor differences in physical features like the cost of diverting earth drains and constructing any other low retaining walls would be 10% of the said value or $60,990. In view of all these factors which have been considered by the deputy chief valuer, we can find no basis for increasing this percentage of discount.

Aside from the disadvantages present in the subject property discussed above, it should also be borne in mind that there is a great deal of similarities between the subject property and the front lot. As Mrs. Hangchi rightly pointed out, both are situated at Peck Hay Road in the same class of residential area where high density is permitted, are of the same size approximately, have fairly steep slopes, sloping upwards from Peck Hay Road and hilly terrain, are four-sided in shape but slightly irregular, have the same maximum density of 150 persons per acre and had the same development potential for development in April 1973.

Having regard to all the evidence adduced, there is in our judgment no justification for disturbing the valuation of the subject property made by the Deputy Chief Valuer, and accordingly, his valuation is confirmed.

Order accordingly.

Solicitors: *Rodyk & Davidson.*

RAM GOSWAMI v. PUBLIC PROSECUTOR

[A.C.J. (Wee Chong Jin C.J.) October 25, 1984]
[Singapore – Magistrate's Appeal No. 106 of 1983]

Legal Profession – Contempt of court – Counsel applied to court for discharge when clients failed to pay fees – Whether counsel's refusal to continue with case amounted to contempt.

The appellant, an advocate and solicitor was convicted for contempt in the face of the court by a District Court under section 8 of the Subordinate Courts Act and sentenced to a fine of $500/-.

The facts were briefly as follows. The appellant had agreed to represent two persons who were charged with an offence under the Women's Charter before a District Court. The oral contract was for payment of a retainer by each client which was to be paid before the trial commenced and a refresher for each day or part thereof after the first day. The trial commenced on March 3, 1983. Only part of the agreed retainer had been paid by his clients despite repeated promises. The appellant subsequently applied for a week's adjournment or alternatively for a discharge. The appellant informed the court that his clients had failed to give him instructions since the last hearing and had failed to pay the agreed fees despite repeated promises to do so. The trial judge refused his application and found him in contempt of court and asked him to show cause. The appellant reiterated his grounds for applying for his discharge and apologised to the court.

The question before the present court was whether the appellant's conduct or act could properly be regarded as a contempt of court.

Held, allowing the appeal: (1) the appellant's conduct did not go so far beyond the limits of non-co-operation or refusal to comply with the court's direction or discourtesy as to harden into contempt of court;

(2) having regard to all the circumstances of the case, the power of summary punishment given to the judge under section 8 of the Subordinate Court's Act should not have been exercised when the appellant apologised for his conduct.

Cases referred to:

(1) *Parashuram Detaram Shamdasani* v. *King Emperor* [1945] A.C. 264.
(2) *Joseph Orakwue Izuora* v. *The Queen* [1953] A.C. 327.
(3) *Weston* v. *Central Criminal Court, Courts Administrator* [1977] Q.B. 32, 46.
(4) *Balogh* v. *St. Albans Crown Court* [1975] Q.B. 73, 85.

MAGISTRATE'S APPEAL.

J. Grimberg for the appellant.
T.Q. Lim (Amicus Curiae).